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UNCLAS SENSITIVE PARIS 07612

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ACTION: UNESCO
INFO: ECON AMBU AMB AMBO DCM SCI POL

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RUEHBS/USEU BRUSSELS BE
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FROM USMISSION UNESCO PARIS

SENSITIVE

DEPARTMENT FOR IO/FO, IO/UNESCO, L/UNA (SULLIVAN)
L/EUR (OLSON), USUN (WILLSON)

E.O. 12958: N/A
TAGS: [SCUL](#) [UNESCO](#) [KPAO](#) [XG](#)
SUBJECT: UNESCO: AMBASSADORIAL DELEGATION SWITCHING:
REVIEW OF LEGAL, PRACTICE, AND POLICY IMPLICATIONS

REF: PARIS 07127

[¶1.](#) (U) This is an action request. See paragraph 7.

[¶2.](#) (U) Reftel reported on a recent UNESCO Executive Board (EB) decision (175th session, fall 2006) with respect to a controversial European Union-initiated practice of ambassadorial switching (or surrogate representation among ambassadors) during EB committee meetings. Reftel further reported that the U.S., India, Japan and several other delegations opposed this action as contravening longstanding UNESCO practice that heretofore has limited participation in such meetings strictly to representatives from States that had been formally elected to serve on those EB committees.

[¶3.](#) (U) Reftel also reported that our success in having the EB adopt a resolution to examine this controversial practice prevented it from receiving the hurried and expedient endorsement it might otherwise have received, if left to European Union Member States and other States that would have gone along unwittingly. The resolution adopted however sets forth a step-by-step procedure that contemplates more in-depth consideration of this issue by not only the UNESCO Director-General, but also by the members of the Executive Board, and potentially by all UNESCO Member States.

[¶4.](#) (U) The key operative paragraphs of the resolution provide as follows:

(quote) The Executive Board, . . .

Para. 4. Requests the Director-General to develop a document for its 176th session outlining the present rules, regulations, and practices concerning the designation of members to delegations to the Executive Board of UNESCO and to similar bodies within the United Nations system generally, and, in that regard, to consult the Members of the Executive Board in this process;

Para. 5. Decides to have a discussion on how to proceed on this issue, based on the document requested above, at its 176th session.
(end quote)

¶5. (U) The review process now underway offers a critical opportunity for the United States and other Executive Board Member States to examine this practice soberly and with a measure of objectivity. U.S. Mission (as well as India and Japan), however, would like to do more than examine this practice. We would like to discredit it and, in the process, override the UNESCO Legal Adviser's (LA) overly simplistic view that the absence of an EB rule expressly prohibiting this practice renders it by default lawful. However, these objectives can only be achieved if serious-minded EB Member States like the U.S., Japan, and India actively seek to influence the analysis of the D-G's "document" to be presented at the next EB meeting (April 10-26, 2007)(see para 3 reftel). In that regard, we believe two statements made by the LA are arguably contradictory and thus merit closer examination as part of our overall assessment. On the one hand, he has informed EB members that "proxy representation" (i.e., one person representing two or more States) is prohibited under UN rules. On the other, he has opined that what the Europeans did at UNESCO did not amount to "proxy representation." Query: did the ambassadorial switching in effect amount to a form of proxy representation?

¶6. (U) At the close of the EB session, U.S., Japanese, and Indian reps reached an informal gentleman's agreement to request our respective capitals and respective delegations to UN agencies to contribute to this review by preparing written views and also by raising pertinent questions aimed at challenging the admissibility of this practice, taking into account the contemporary and traditional "rules, regulations, and practices" in place at those UN agencies. Since it is widely acknowledged (including by UNESCO's Legal Adviser) that rules and practices can and do vary from one international organization to another, the specific issue the Mission needs to decide is whether ambassadorial delegation switching should be a permitted practice at UNESCO. The answer to that question will be shaped largely by what we learn from our respective surveys and analyses. For this reason, it would be useful to also examine the relevant rules, regulations, and practices that are recognized at non/non-UN agencies that have governing bodies comparable to the EB.

¶7. (U) Action Request. Mission requests that Department prepare as soon as possible a preliminary draft of a paper reflecting USG views regarding this practice. Mission proposes that Department assess the unusual practice that certain European ambassadors have recently sought to normalize within UNESCO's Executive Board in the light of representation rules, regulations, practices, and applicable legal norms and principles recognized by comparable governing bodies elsewhere within the UN system as well as at other international organizations. On the basis of Department's preliminary paper, Mission would then engage in an exchange of views with our Japanese and Indian Mission counterparts government's respective preliminary views. Mission would provide feedback to the Department from those discussions before the USG paper is finalized. It would be highly desirable if Mission could provide the Department's finished product to UNESCO's secretariat not later than January 16, 2007. Ideally, and to have maximum impact, the USG's considered views should be submitted to the Secretariat in time to influence its separate analysis of this question. We don't yet have a sense as to when the Secretariat's "document" will be completed, but we should assume

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that it could be ready fairly early in 2007.

¶8. (SBU) Japanese UNESCO delegation's legal adviser (Kawahara) informed Mission this week that the Japanese Foreign Ministry and Japanese multilateral missions have begun research work to prepare

for submission of an official GOJ paper. Similarly, we learned from our Indian colleague this week that this issue is India's top priority of items from the last EB that require follow-up, and that the Indian foreign ministry is actively preparing a paper on this issue that it intends for public distribution. Both delegations have expressed interest in receiving USG views and in collaborating further with us on this. Hence, the follow-up collaboration that we anticipated is gaining traction.

¶9. (U) Comment: Mission welcomes Department's reaction to this request and to our proposed follow-on collaboration with India and Japan. Within the Executive Board, Afghanistan, India and Japan are (correctly) seen as the lead activists on this issue, and the U.S. seen as a like-minded but less prominent player. This is a perception and a reality that we wish to encourage, particularly as we are mindful of the need to avoid needlessly provoking EU Member States over this issue. Our approach to date has been that this issue can be, and deserves to be, addressed dispassionately and on its merits, bearing in mind its wider implications for important issues of process and principle that affect U.S. interests at multilateral international institutions. End Comment.

¶10. (U) Primary contact person at the Mission will be Legal Adviser Michael Peay, and back-up will be DCM Andy Koss. Oliver